

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

WOLFGANG RUST and BOBBY  
CONN,

Plaintiffs,

vs.

NEBRASKA DEPARTMENT OF  
CORRECTIONAL SERVICES  
RELIGION STUDY COMMITTEE, and  
ROBERT P. HOUSTON, FRANCIS X.  
HOPKINS, LARRY WAYNE, KATHY  
BLUM, JOE BALDASSANO, STEVE  
MARSH, and TARN E. DAVIS, in their  
official and individual capacities,

Defendants.

4:08cv3185

**ANSWER TO AMENDED COMPLAINT**

COME NOW the Defendants Nebraska Department of Correctional Services Religion Study Committee, and Robert P. Houston, Francis X. Hopkins, Larry Wayne, Kathy Blum, Joe Baldassano, Steve Marsh, and Tarn E. Davis, in their official and individual capacities, through counsel, and in Answer to the Plaintiffs' Amended Complaint, state, aver, allege and deny as follows:

1. Deny each and every allegation contained in the Amended Complaint except those specifically admitted herein and those which constitute admissions against the Plaintiffs' interest.
2. Admit paragraphs 1 – 12, 17, 19 – 21, 61, 65 and 71 and 77.
3. Do not have sufficient information to admit or deny the allegations contained in paragraphs 31- 32, 34, 38, 40 - 42, 44 - 54, 56, 58 - 59, 63 and 79.

**DEFENSES**

1. Allege that the Plaintiffs fail to state a claim upon which relief can be granted.
2. Allege that the Defendants at all times acted in good faith and are immune from suit and an award of damages against them in their individual capacities.
3. Allege that any request for damages against the Defendants in their individual capacities is barred by qualified immunity.
4. Allege that the Plaintiffs have not exhausted their available administrative remedies prior to filing as required by 42 U.S.C. § 1997e(a).
5. Allege that any requests for damages against the Defendants, in their official capacities, are barred by the States' sovereign immunity and by the Eleventh Amendment to the United States Constitution.

NEBRASKA DEPARTMENT OF  
CORRECTIONAL SERVICES RELIGION  
STUDY COMMITTEE, and ROBERT P.  
HOUSTON, FRANCIS X. HOPKINS, LARRY  
WAYNE, KATHY BLUM, JOE BALDASSANO,  
STEVE MARSH, and TARN E. DAVIS, in their  
official and individual capacities, Defendants.

BY: JON BRUNING, #20351  
Attorney General

BY: s/Ryan C. Gilbride  
Ryan C. Gilbride, #22415  
Assistant Attorney General  
2115 State Capitol  
Lincoln, NE 68509  
(402) 471-9656  
Fax: (402) 471-4725  
ryan.gilbride@nebraska.gov

**Attorneys for Defendants**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7<sup>th</sup> day of July, 2009, I electronically filed the foregoing Answer to Amended Complaint using the CM/ECF system, and that a true and accurate copy was caused to be mailed, first class United States mail, postage prepaid, to the Plaintiffs herein, addressed to Wolfgang Rust #30118 and Bobby Conn #57625, Nebraska State Penitentiary, P.O. Box 2500, Lincoln, NE 68542-2500.

s/Ryan C. Gilbride  
Ryan C. Gilbride, #22415  
Assistant Attorney General  
2115 State Capitol  
Lincoln, NE 68509  
(402) 471-9656  
Fax: (402) 471-4725  
ryan.gilbride@nebraska.gov